

WILLIAM C. FRANCIS

IBLA 91-110

Decided September 23, 1992

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting a noncompetitive oil and gas lease offer. WYW 122860.

Affirmed.

1. Oil and Gas Leases: Offers to Lease

It is proper for BLM to reject a noncompetitive oil and gas lease offer for land included in a competitive oil and gas lease sale held the previous day when a bid had been received at the competitive sale.

APPEARANCES: William C. Francis, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

William C. Francis has appealed from a December 12, 1990, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer.

On December 4, 1990, BLM offered Parcel WY-401 for oil and gas leasing at a competitive sale. 1/ A bid was submitted by R. K. O'Connell. 2/ The next day, Francis filed a noncompetitive lease offer for the same land as that described as Parcel WY-401 in the December 4 sale. In its December 12 decision, BLM rejected Francis' offer because a bid had been received during the competitive lease sale, and the land was therefore not available for noncompetitive leasing under 43 CFR 3110.1(b). As the basis for its decision, BLM relied on the language in 43 CFR 3110.1(b) that "[o]nly lands that have been offered competitively * * * and for which no bid has been received, shall be available for noncompetitive lease." (Emphasis added.)

Francis appealed from BLM's decision. On appeal, he argues that, pursuant to 43 CFR 3110.1(b), his offer was valid when he submitted it, because the bid received at the competitive sale was "not finalized." 3/

1/ Parcel WY-401 contained 80 acres of land in the SW1/4 SW1/4 sec. 10, and the NW1/4 SW1/4 sec. 17, T. 12 N., R. 107 W., sixth principal meridian, Sweetwater County, Wyoming.

2/ On Jan. 4, 1991, BLM issued oil and gas lease WYW 122860 to O'Connell. 3/ 30 U.S.C. § 226(c) (1988) provides that the "person first making application for the lease who is qualified to hold a lease * * * shall be entitled to a lease * * * without competitive bidding." This constitutes noncompetitive leasing. See 101 Stat. 1330-257 (1987); 43 CFR Part 3110.

[1] Section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1982), was amended in pertinent part on December 22, 1987 (see 101 Stat. 1330-256 (1987)), to provide that, with the exception of lands in special tar sand areas, "[a]ll lands to be leased * * * shall be leased * * * to the highest responsible qualified bidder by competitive bidding." 30 U.S.C. § 226(b)(1)(A) (1988). The amended statute requires BLM to accept the highest bid from a responsible qualified bidder if that bid is in an amount equal to or greater than the national minimum acceptable bid amount, and issue a lease within 60 days following full payment of the remainder of the bonus bid due and the first year's annual rental. 4/ Id. Therefore, if a minimum acceptable bid is submitted at a competitive oil and gas lease sale by a responsible qualified bidder who submits the balance of the bonus bid and first year's rental in a timely manner, BLM is required to issue the lease to that bidder. See 43 CFR 3120.5-3(b).

The statutes also provide for noncompetitive leasing under very limited circumstances. See 30 U.S.C. § 226(c) (1988); 43 CFR Part 3110. In all cases, the land must first be offered competitively. See H.R. Rep. No. 391, 100th Cong., 1st Sess. 722 (1987), reprinted in 1987 U.S.C.C.A.N. 2313-1, 2313-380; 53 FR 22824 (June 17, 1988); Don D. Armentrout, 117 IBLA 1, 2 (1990); Robert G. Volkmann, 112 IBLA 5, 6 (1989). The only lands available for noncompetitive leasing are those for which "no bids are received or for which the highest bid is less than the national minimum acceptable bid." 5/ 30 U.S.C. § 226(b)(1)(A) (1988) (emphasis added). Thus, land not made available for competitive leasing and land for which a bid equal to or in excess of the minimum acceptable is received may not be leased noncompetitively. See H.R. Rep. No. 391, 100th Cong., 1st Sess. 722 (1987), reprinted in 1987 U.S.C.C.A.N. 2313-1, 2313-380; Robert G. Volkmann, supra at 7.

The regulations implementing 30 U.S.C. § 226 (1988) mirror the statute. The regulation at 43 CFR 3110.1(b) provides that "[o]nly lands that have been offered competitively under subpart 3120 * * * and for which no bid has been received, shall be available for noncompetitive lease." (Emphasis added.) See also 43 CFR 3110.1(a)(3). A "bid" is defined as "an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive sale." 43 CFR 3100.0-5(k); see 53 FR 9216 (Mar. 21, 1988). Thus, under 43 CFR 3110.1(b) an amount less than the minimum acceptable bonus bid amount is not considered to be a bid.

In the case now before us, O'Connell submitted a bid of \$3 per acre, or \$1 per acre more than the minimum acceptable bid (see 43 CFR 3120.1-2(c)), for the land in parcel WY-401. Therefore, BLM was not authorized by 30 U.S.C. § 226(b)(1)(A) (1988) or 43 CFR 3110.1(b) to offer the land for

4/ This requirement does not preclude BLM from finding it inappropriate to lease the land for oil and gas development.

5/ Under 43 CFR 3110.1(b), qualifying lands are available for noncompetitive leasing the first business day following the last day of the competitive sale.

noncompetitive leasing. See 43 CFR 3110.1(b). BLM properly rejected Francis' noncompetitive lease offer. See Donald J. Eckelberg, 117 IBLA 390, 391 (1991).

It was also not necessary for BLM to wait to see whether the land was ultimately leased before rejecting Francis' noncompetitive lease offer. Under the statute and regulations, a parcel which is sold competitively is not available for noncompetitive leasing, and a noncompetitive lease offer for that parcel must be rejected. See 53 FR 22824 (June 17, 1988) ("If the lands are sold competitively * * * the noncompetitive offer [will be] rejected"). When O'Connell submitted a bid BLM was precluded by 43 CFR 3110.1(b) from issuing a noncompetitive lease, regardless of what might subsequently happen, because the land was not available for noncompetitive leasing. See Donald J. Eckelberg, supra at 391.

If BLM did not issue a lease to O'Connell for any reason, it would have remained unable to issue a noncompetitive lease to Francis. The proper course of action for BLM to take is to simply reject the bid and "reoffer [the lands] competitively." 43 CFR 3120.5-3(c). Thus, when a bid (as that term is defined by 43 CFR 3100.0-5(k)) is submitted and a lease does not issue, the tract for which the bid has been received is not available for noncompetitive leasing. Cf. Donald J. Eckelberg, supra at 391 (withdrawal of bid).

Therefore, it was proper for BLM to reject Francis' noncompetitive oil and gas lease offer for the lands in parcel WY-401 because that land was not then available for noncompetitive leasing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

James L. Burski
Administrative Judge

